

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-6377**

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JAMES AVERY,

Plaintiff - Appellant,

versus

RONNIE MOATS, Warden,

Defendant - Appellee.

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Appeal from the United States District Court for the District of Maryland, at Greenbelt. Deborah K. Chasanow, District Judge. (CA-98-3569)

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Submitted: July 8, 1999

Decided: July 14, 1999

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Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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James Avery, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

James Avery seeks to appeal the district court's order dismissing his civil action without prejudice. We dismiss the appeal for lack of jurisdiction because Avery's notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on November 6, 1998.\* Avery's notice of appeal was filed on March 9, 1999. Because Avery failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and

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\* Although the district court's order is marked as "filed" on November 5, 1998, the district court's records show that it was entered on the docket sheet on November 6, 1998. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date that the order was entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murray, 806 F.d. 1232, 1234-35 (4th Cir. 1986).

legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED